IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 231

GEORGE VINCENT McMAHON,
*Petitioner,*

vs.

CITY OF DUBUQUE, IOWA,
*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.


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The City of Dubuque, Iowa, opposes the Petition of George Vincent McMahon for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Eighth Circuit entered in this cause on May 8, 1958.

## REASONS FOR OPPOSING PETITION FOR WRIT OF CERTIORARI.

The Petition fails to set forth any special or important reason therefor. This case does not fall within any of the reasons enumerated in Rule 19b of the above entitled Court.

The subject matter of the case is but a routine question of zoning and stands or falls upon the specific question of whether or not the discretionary power of the City Council of the City of Dubuque has been abused under the facts in the case. The facts of this case are peculiar to itself and any rule enunciated by the Supreme Court of the United States would only be cumulative so far as the Law of zoning is concerned, as the rule would only apply to the identical set of facts at the same time and place.

Rather, there are peculiar and compelling reasons why this Writ should be denied. As shown in Petitioner's Statement of the Case, the land under consideration has been acquired by the State of Iowa, through condemnation proceedings and Petitioner's only concern is with the amount of damages that a jury may award him for the value of his land. The only way that this zoning matter is involved at all is the manner in which it bears upon the testimony of the valuation witnesses. This testimony is in no way binding upon the jury and it may award petitioner such damages as it finds basis for in the evidence. Consequently, it is respondent's position that any determination by this Court in the matter presented by Petitioner would have such an indirect bearing upon the true issue that there would not be a special and important reason for granting of the Writ, even if Petitioner had established in the lower Courts that he had a good case.

On Page 12, lines 2, 3, 4, and 5 of his Petition, Petitioner states, referring to the Planning and Zoning Commission of the City of Dubuque:

> "Patently, this is a deliberate, unconscionable and obvious perversion of the zoning ordinances, and even on its face is baldly arbitrary, unreasonable and discriminatory."

The Planning and Zoning Commission is a group of public spirited citizens, acting without compensation. The District Court found (R. page 43) that,

> "There is no claim made that the members of the Planning and Zoning Commission and City Council, in refusing to extend the Local Business District in question north of Grandview Avenue have been motivated by ill will or other improper motives."

Respondent submits that if these public spirited citizens are to be subjected to the abusive attack against their character, alleging them to be men without conscience, arbitrary, and perverters of the truth, as set forth in the above quotation from the Petition for the Writ, such attack should have been made at the inception so as to afford them the opportunity to be heard in defense of their personal characters and reputation. Respondent further submits that such a reckless and unjustified attack upon the character of these men constitutes sufficient grounds in itself for the dismissal of the Petition.

Respectfully submitted,

CITY OF DUBUQUE, IOWA,
Respondent,
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